U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 22-0539 BLA

ROGER L. MULLINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CEDAR COAL COMPANY	)	
	)	
and	)	
	)	
AMERICAN ELECTRIC POWER CORPORATION c/o EAST COAST MANAGEMENT	)	DATE ISSUED: 12/22/2023
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Granting Request for Modification of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Mark J. Grigoraci (Robinson & McElwee PLLC), Charleston, West Virginia, for Employer and its Carrier.

Jeffrey S. Goldberg (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals),

Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Theresa C. Timlin's Decision and Order Granting Request for Modification (2020-BLA-05514) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a request for modification of a denial of a subsequent claim filed December 12, 2012.[1]

In her initial May 31, 2019 Decision and Order Denying Benefits (Decision and Order), the ALJ accepted the parties' stipulation that Claimant has a totally disabling respiratory or pulmonary impairment, and therefore found Claimant established a change in an applicable condition of entitlement.[2] 20 C.F.R. §§718.204(b)(2), 725.309(c). However, she found Claimant established only twelve years of coal mine employment, and therefore could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018). She further

[1] Claimant has filed three previous claims. Director's Exhibits 1-3. On March 29, 2011, the district director denied his prior claim, filed on December 23, 2010, by reason of abandonment. Director's Exhibits 3; 12 at 117-18. A denial by reason of abandonment is "deemed a finding the Claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.409.

[2] Where a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant failed to establish any element of entitlement in his prior claim, he had to submit new evidence establishing any one element to obtain a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

found Claimant did not establish the existence of pneumoconiosis, 20 C.F.R. §718.202(a), and denied benefits.

Claimant timely requested modification, and the case was again assigned to the ALJ. In her September 19, 2022 Decision and Order Granting Request for Modification (Decision and Order on Modification), the subject of this appeal, the ALJ found that granting modification would render justice under the Act,[4] and she accepted the parties' stipulation that Claimant has twelve years of underground coal mine employment. She found Claimant established a totally disabling pulmonary or respiratory impairment, which was no longer stipulated by the parties, and that Claimant established the existence of legal pneumoconiosis. 20 C.F.R. §§718.202, 718.204(b)(2). Further, she found Claimant established his pneumoconiosis was a substantially contributing cause of his total disability, 20 C.F.R. §718.204(c), and established a change in condition. She therefore awarded benefits.

On appeal, Employer argues the ALJ erred by admitting evidence in excess of the evidentiary limitations. On the merits, it argues the ALJ erred in finding Claimant established the existence of pneumoconiosis, and therefore also erred in finding Claimant established a change in condition. Employer further argues the ALJ erred in finding Claimant established pneumoconiosis is a substantially contributing cause of his totally

[4] The ALJ stated that, "[b]efore granting relief in a modification petition on the merits," she "must determine whether reopening the claim would render justice under the Act." Decision and Order at 6. In *Kincaid v. Island Creek Coal Co.*, BLR , BRB Nos. 22-0024 BLA and 22-0024 BLA-A, slip op. at 4 (Nov. 17, 2023), the Board clarified an ALJ need not make an initial threshold finding of justice under the Act before considering the merits of the request for modification. The Board noted:

> While it might make sense to make a threshold determination in cases of obvious bad faith, it does not follow that a threshold determination is appropriate in cases where there is no indication of improper motive. Rather, because accuracy is a relevant factor, it follows that an ALJ must consider the evidence and render findings on the merits to properly assess whether modification is warranted.

Id. Further, the Board clarified an ALJ who simply dismisses a modification request as a threshold matter without considering the accuracy of the underlying decision does not satisfy the regulatory provision mandating that an ALJ "must consider" the merits of a modification request. *Id.*; 20 C.F.R. §725.310(c).

disabling impairment.[5] Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response urging rejection of Employer's evidentiary argument.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Modification

The ALJ may grant modification based on either a change in conditions or a mistake in a determination of fact. 20 C.F.R. §725.310(a). In considering whether a change in conditions has been established, the ALJ is obligated to perform an independent assessment of the newly submitted evidence, in conjunction with the previously submitted evidence, to determine if the weight of the new evidence is sufficient to establish at least one element of entitlement that defeated an award in the prior decision. *See Kingery v. Hunt Branch Coal Co.*, 19 BLR 1-6, 1-11 (1994); *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71 (1992). An ALJ may correct any mistake of fact, "including the ultimate issue of benefits eligibility." *Youghiogheny & Ohio Coal Co. v. Milliken*, 200 F.3d 942, 954 (6th Cir. 1999); *Consol. Coal Co. v. Worrell*, 27 F.3d 227, 230 (6th Cir. 1994). A party is not required to submit new evidence because an ALJ has the authority "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971).

Evidentiary Limitations

[5] We affirm, as unchallenged on appeal, the ALJ's finding Claimant established a totally disabling respiratory or pulmonary impairment, and that granting modification would render justice under the Act. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Modification at 7, 47.

[6] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 12 at 97-100; 17 at 22.

Employer argues the ALJ erred in admitting the initial and supplemental medical reports of Dr. Go, contending they constitute affirmative pulmonary function test evidence in excess of the evidentiary limitations. Employer's Brief at 9-12. We disagree.

The evidentiary limitations at 20 C.F.R. §725.414(a)(2)(i), in conjunction with 20 C.F.R. §§725.456(b)(1) and 725.310(b), limit Claimant to three medical reports and the results of no more than three pulmonary function tests in support of his affirmative case. Although "[a]ny . . . pulmonary function test results . . . that appear in a medical report" must separately be admissible in accordance with the evidentiary rules, those rules specifically provide that such testing *is* separately admissible as part of a miner's treatment records, and is not subject to the numerical limitations for affirmative evidence, if it is contained within "any record" of a miner's hospitalization or treatment for a respiratory or pulmonary disease. 20 C.F.R. §§725.414(a)(2)(i), 725.414(a)(4).

Dr. Go provided an initial medical report dated April 15, 2020, and two supplemental reports dated November 3, 2020, and May 15, 2021. Claimant's Exhibits 9-11. As part of his initial and second supplemental reports, he summarized and interpreted the results of pulmonary function tests dated January 5, 2009, July 28, 2009, April 14, 2011, November 28, 2012, April 23, 2014, June 24, 2015, and August 31, 2016.[7] Claimant's Exhibits 9 at 3-6, 11 at 2-3. These tests were not designated as affirmative or rebuttal pulmonary function test evidence by either Claimant or Employer but were included within treatment record evidence designated by the parties.[8] Claimant's Exhibit 13 at 1; Employer's Exhibit 8 at 102, 206, 219, 223, 233-34.

At the hearing before the ALJ, Employer raised its argument concerning Dr. Go's reports and objected to their admission to the evidentiary record. Hearing Transcript at 19-20. The ALJ rejected Employer's argument, noting that medical experts are encouraged to review the breadth of medical evidence available for a claim and, while the depth of an expert's analysis of a treatment record pulmonary function test might affect the weight she

[7] Dr. Go also considered the September 11, 2019 and January 21, 2021 tests which Claimant designated as affirmative pulmonary function study evidence. Claimant's Exhibits 5, 6, 9 at 6, 11 at 3; Claimant's May 21, 2021 Final Evidence Summary.

[8] The January 5, 2009 pulmonary function test considered by Dr. Go is not included among the treatment record evidence designated by the parties. However, the medical opinions of Drs. Ranavaya, Zaldivar, and Rosenberg, who also interpreted the test, indicate that it was performed as part of Claimant's treatment at the Charleston Area Medical Center, likely in connection with Claimant's coronary artery bypass surgery conducted at the same facility. Employer's Exhibits 3 at 2; 4 at 7; 5 at 4; 6 at 25.

affords their opinion, it would not convert the treatment records into new affirmative objective testing evidence for purposes of the evidentiary limitations. *Id.* at 24. She further stated that, if a medical opinion were rendered based on objective studies that were in excess of the evidentiary limitations or otherwise inadmissible, the proper course of action would be to consider the weight to be afforded the opinion without consideration of the portions based upon the inadmissible evidence, rather than to render the entire opinion inadmissible. *Id*. at 26; *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-241 (2007) (en banc).

There is no dispute that the pulmonary function test results in question were performed in the course of Claimant's treatment and hospitalizations, constitute treatment record evidence, and are admissible under 20 C.F.R. §725.414(a)(4). A physician's review of the admissible evidence of record is a standard, often necessary component of their medical report. *See* 20 C.F.R. §725.414(a)(1) (providing in relevant part that "a medical report may be prepared by a physician who examined the miner and/or reviewed the available admissible evidence"). As the ALJ correctly held, a physician's review of test results in a treatment record does not convert such testing into new affirmative evidence under the evidentiary limitations. Employer's argument to the contrary lacks basis in the Act or its implementing regulations. We thus affirm the ALJ's admission of Dr. Go's reports.

Entitlement to Benefits – 20 C.F.R. Part 718

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must demonstrate he has a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2), (b).

The ALJ considered the opinions of Drs. Go, Forehand, and Gaziano that Claimant has legal pneumoconiosis, and the contrary opinions of Drs. Zaldivar, Ranavaya, and Rosenberg. Claimant's Exhibits 8-12; Employer's Exhibits 1, 3-5, 12. She gave diminished weight to several of the physicians' opinions for various reasons: Drs. Zaldivar

and Rosenberg because "their reasoning was flawed"; Dr. Forehand because his credentials are "not as strong" as the other doctors; and Dr. Gaziano because it was not well-documented. However, she found Dr. Go's diagnosis of legal pneumoconiosis and Dr. Ranavaya's contrary opinion entitled to "probative weight" and thus evaluated which of the two opinions "deserves the greatest weight." Finding Dr. Go better-credentialed and his analysis more persuasive, the ALJ determined the medical opinion evidence supports finding legal pneumoconiosis. Decision and Order on Remand at 32-37.

Employer argues the ALJ erred in weighing the opinions of Drs. Go, Ranavaya, Rosenberg, and Zaldivar. Employer's Brief at 13-19. We disagree.

Drs. Go and Ranavaya

Dr. Go diagnosed Claimant with an obstructive lung disease based on Claimant's pulmonary function study results and chronic respiratory symptoms, and opined that his coal dust exposure and prior coronary artery bypass surgery contributed to his condition. Claimant's Exhibits 9 at 8, 10; 10 at 3-4; 11 at 5-7; Employer's Exhibit 6 at 14-15, 22-23, 29. Dr. Ranavaya diagnosed life-long bronchial asthma based on Claimant's treatment records and pulmonary function study results, which he opined demonstrated reversibility upon administration of bronchodilator. Employer's Exhibits 1 at 9-13; 3 at 6-18; 12 at 3, 7. In addition, he diagnosed a restrictive impairment due to post-surgical changes resulting from Claimant's coronary artery bypass surgery. Employer's Exhibit 1 at 12-13. He opined airway remodeling secondary to asthma resulted in the fixed component of Claimant's obstructive impairment, and coal dust exposure neither caused nor contributed to Claimant's asthma or his respiratory impairments. Employer's Exhibits 1 at 13; 12 at 7.

As the ALJ noted, Drs. Go and Ranavaya had conflicting opinions regarding whether Claimant has asthma, and the significance of the bronchodilator response seen in some of Claimant's pulmonary function studies. Decision and Order on Remand at 36-37. Dr. Ranavaya diagnosed asthma based on a history of respiratory symptoms consistent with the disease, prior diagnosis of asthma in Claimant's treatment records, and Claimant's pulmonary function test results. Employer's Exhibit 1 at 10-11. He noted Claimant's June 25, 2020 pulmonary function test demonstrated an increase of 190 ml, equating to 15%, of FEV1 upon administration of bronchodilators, which he opined was consistent with the American Thoracic Society (ATS) and National Asthma Education and Prevention Program guidelines for the diagnosis of asthma. *Id.* Dr. Go disagreed with Dr. Ranavaya's diagnosis, noting the ATS criteria requires an increase of 200 ml FEV1, as compared to the 190 ml seen on Claimant's test, and opining bronchoreversibility is insufficient to diagnose the disease. Claimant's Exhibit 10 at 3-4. He further opined the presence of bronchoreversibility does not allow one to exclude coal dust-induced lung disease, nor

provide a basis to exclude coal dust-induced disease from existing alongside asthma and contributing to an obstructive impairment. *Id*. at 4.

In response, Dr. Ranavaya disagreed with Dr. Go's opinion, noting that although the absolute change in Claimant's FEV1 did not technically meet the ATS criteria, the value was close enough to support the diagnosis of asthma when considered alongside Claimant's medical history and recurrent respiratory symptoms. Employer's Exhibit 3 at 7, 9-10. In turn, Dr. Go noted that only two of four pulmonary function studies he reviewed—the June 25, 2020 and January 21, 2021 studies—showed a positive bronchodilator response, and none of them met the ATS criteria. Claimant's Exhibit 11 at 6. He thus reiterated his opinion that "there is insufficient objective evidence to support a diagnosis of asthma in [Claimant's] case." *Id*. at 7.

The ALJ found both physicians' opinions reasoned and documented. However, considering their conflicting opinions regarding asthma and Claimant's bronchodilator response, she found Dr. Go's opinion more persuasive, noting his superior qualifications in the area of black lung disease. Decision and Order on Remand at 34-37.

As Employer does not challenge the ALJ's finding that Dr. Go is better-qualified than Dr. Ranavaya to render an opinion concerning legal pneumoconiosis, we affirm this credibility determination. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 36-37.

Employer argues, however, that the ALJ erred in crediting Dr. Go's opinion as reasoned, contending the physician relied on medical studies of miners in conditions different from those of Claimant. Employer's Brief at 19-20. Further, it argues the ALJ erred in crediting Dr. Go's opinion over Dr. Ranavaya's, contending the opinions of Drs. Ranavaya and Zaldivar establish Claimant's pulmonary function study results and medical history were diagnostic of asthma, while Dr. Go's contrary opinion unreasonably focuses on the 10 ml difference between Claimant's test results and the ATS criteria. Employer's Brief at 15-16.

As the trier-of-fact, the ALJ has the discretion to assess the credibility of the medical opinions and assign those opinions appropriate weight, and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997). Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do.[9] *See Anderson v. Valley Camp of Utah, Inc.*,

[9] We also disagree with Employer's argument that the ALJ should have discredited Dr. Go's opinion because he did not review Claimant's treatment records from Dr. Atassi.

12 BLR 1-111, 1-113 (1989). Moreover, the ALJ permissibly assigned greater weight to Dr. Go's opinion based on her finding he has superior qualifications, which we have affirmed. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order on Remand at 37.

Dr. Rosenberg

Dr. Rosenberg opined Claimant had an obstructive impairment caused by aggravated asthma and post-surgical changes, but unrelated to coal dust exposure. Employer's Exhibit 5 at 5-7. Dr. Rosenberg stated obstructive disease due to coal dust exposure occurs, and is noticeable, within the first few years after beginning work in the coal mines, and legal pneumoconiosis does not present "after a time frame of decades without respiratory complaints." Employer's Exhibit 5 at 7-8. Noting he had not seen any evidence Claimant sought treatment for respiratory disease after leaving the mines in 1982, he opined Claimant's respiratory issues began more recently and thus could not be legal pneumoconiosis. *Id*. He instead attributed Claimant's respiratory issues to exposures he faced after leaving the coal mines, including allergic reactions to wood dust from working in a sawmill which may have aggravated his asthma, and reduced lung volumes secondary to his 2009 coronary artery bypass surgery. *Id*. at 8.

The ALJ noted Dr. Rosenberg relied on the length of time between Claimant's last coal mine employment and the beginning of his treatment for respiratory issues to conclude coal mine dust exposure did not cause Claimant's impairment. Decision and Order on Remand at 35. Contrary to Employer's argument, the ALJ permissibly found Dr. Rosenberg's opinion contrary to the regulations, which recognize pneumoconiosis as "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure."[10] 20 C.F.R. §718.201(c); *see Hobet Mining, LLC v. Epling*,

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Employer's Brief at 19. A medical opinion need not be discounted merely because the physician did not review additional medical evidence of record. *See Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n.1 (1986) (ALJ properly considered whether objective data offered as documentation adequately supported the opinion). As the ALJ noted that Dr. Go's opinion was based on his review of Claimant's medical records, objective studies, and other physicians' reports, we see no error in her finding his opinion reasoned and documented. Decision and Order on Remand at 34, 36-37.

[10] We reject Employer's argument that the ALJ erred by failing to explain why her findings concerning Dr. Rosenberg's opinion differ from those in her prior decision, in which she credited Dr. Rosenberg's opinion that Claimant's coronary artery bypass surgery is a cause of his current impairment and that Claimant had insufficient coal dust exposure

783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); *Lewis Coal Co. v. Director, OWCP*, 373 F.3d 570, 580 (4th Cir. 2004) (it is appropriate to give little weight to medical findings that conflict with the Act's implementing regulations); Decision and Order on Remand at 35.

Dr. Zaldivar

Dr. Zaldivar opined Claimant has a disabling impairment caused primarily by untreated asthma, exacerbated by obstructive sleep apnea and post-surgical changes from Claimant's coronary artery bypass surgery, and unrelated to coal dust exposure. Employer's Exhibit 4 at 1, 8-9. In a second supplemental opinion, Dr. Zaldivar reviewed the June 25, 2020 pulmonary function study Dr. Ranavaya administered. Employer's Exhibit 4 at 6; *see* Employer's Exhibit 1. He noted Claimant's baseline FEV1 was much lower than the average of Claimant's prior studies, but nonetheless showed a positive bronchodilator response, and opined the variability in Claimant's FEV1 results was indicative of asthma. Employer's Exhibit 4 at 6.

Citing Dr. Zaldivar's initial and supplemental reports, the ALJ found Dr. Zaldivar relied on partial bronchoreversibility to diagnose Claimant with an obstructive impairment due to asthma and unrelated to coal dust exposure. Decision and Order on Remand at 36. Contrary to Employer's argument, the ALJ permissibly found Dr. Zaldivar's opinion unpersuasive because he did not explain how the non-reversible portion of Claimant's

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to cause significant impairment. Employer's Brief at 14. As discussed above, the ALJ is obligated to perform an independent assessment of the newly submitted evidence, in conjunction with the previously submitted evidence, to determine if the weight of the new evidence is sufficient to establish at least one element of entitlement that defeated an award in the prior decision. *See Kingery v. Hunt Branch Coal Co.*, 19 BLR 1-6, 1-11 (1994); *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71 (1992). The ALJ was therefore required to consider Dr. Rosenberg's newly submitted supplemental opinion, as well as the other medical reports and objective testing submitted on modification, in considering the relevant evidence on legal pneumoconiosis—the element of entitlement for which this claim was previously denied. Because the ALJ considered Dr. Rosenberg's opinion in light of the newly submitted evidence and permissibly discredited it, as we have affirmed, we see no error in her consideration of his opinion. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 n.10 (4th Cir. 1999) (ALJ's "duty of explanation" is satisfied if "a reviewing court can discern what the ALJ did and why he did it").

impairment, demonstrated by the June 25, 2020 study, is not significantly related to or substantially aggravated by coal dust exposure. *See W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018); *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74 n.4 (4th Cir. 2017); *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441 (4th Cir. 1997); Decision and Order on Remand at 36.

Because it is supported by substantial evidence, we further affirm the ALJ's finding that Claimant established the existence of legal pneumoconiosis based on the medical opinion evidence. 20 C.F.R. §§718.201(a)(2), (b), 718.202(a); Decision and Order on Remand at 37, 41.[11]

Disability Causation

To establish disability causation, Claimant must prove pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause if it has "a material adverse effect on the miner's respiratory or pulmonary condition" or "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(i), (ii).

The ALJ considered the opinions of Drs. Go, Forehand, Gaziano, Zaldivar, Rosenberg, and Ranavaya on disability causation. Decision and Order on Remand at 47-49. The ALJ permissibly discredited the opinions of Drs. Zaldivar, Rosenberg, and Ranavaya because they failed to diagnose legal pneumoconiosis, contrary to her finding Claimant established the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Toler v. E. Assoc. Coal Corp*., 43 F.3d 109, 116 (4th Cir. 1995) (physician's opinion on disability causation "may not be credited at all" absent "specific and persuasive reasons" for concluding it is independent of his or her mistaken belief the miner did not have pneumoconiosis); Decision and Order on Remand at 48-49.

Dr. Forehand opined Claimant had a restrictive impairment constituting legal pneumoconiosis which was a substantial contributor to his disability. Claimant's Exhibits 1 at 1-5; 8 at 3-6. He based his opinion on Claimant's coal mine dust exposure history and

[11] Employer also argues the ALJ erred because her analysis of whether Claimant's pneumoconiosis arose out of his coal mine employment "was subsumed by the erroneous finding that the claimant has legal pneumoconiosis." Employer's Brief at 21. As we affirm the ALJ's finding Claimant established legal pneumoconiosis, we also affirm her finding Claimant's pneumoconiosis arose out of his coal mine employment. Decision and Order on Remand at 41.

his pulmonary function study results, which he opined were more consistent with pneumoconiosis than asthma, though he could not rule out an asthmatic component. *Id*. Further, he opined post-surgical changes from Claimant's coronary artery bypass surgery would not have any meaningful impact on Claimant's lung function. Claimant's Exhibit 8 at 4. Dr. Go opined Claimant has an obstructive impairment that constitutes legal pneumoconiosis and substantially contributed to his total disability based on Claimant's coal mine employment history and pulmonary function test results. Claimant's Exhibits 9 at 8-9, 10; 10 at 4; 11 at 7. He also found post-surgical changes from Claimant's coronary artery bypass surgery were more likely than not a contributor to Claimant's disabling impairment; and while maintaining his opinion that the evidence is insufficient to diagnose asthma, stated it was "less likely," though "possible," that asthma was a contributor to the total disability. *Id*.

The ALJ noted both Drs. Forehand and Go explained how and why their opinions diverged from those of Drs. Ranavaya, Rosenberg, and Zaldivar, and both doctors considered asthma and post-surgical changes as potential contributors to Claimant's disability. Decision and Order on Remand at 48. She found their opinions reasoned and documented and entitled to probative weight, assigning slightly less weight to Dr. Forehand's opinion based on his credentials. Decision and Order on Remand at 48. Thus, she found the medical opinions establish disability causation. *Id*. at 49.

In addition to the arguments it raised concerning legal pneumoconiosis, Employer generally argues the ALJ should have credited the opinions of Drs. Ranavaya, Zaldivar, and Rosenberg that Claimant's disability is caused solely due to his asthma and/or post-surgical changes over the opinions of Drs. Forehand and Go. Employer's Brief at 21-24.

As the ALJ rationally discredited the opinions of Drs. Ranavaya, Zaldivar, and Rosenberg, and Employer raises no new arguments as to why the ALJ should not have credited the opinions of Drs. Go and Forehand, we affirm her finding the medical opinions establish Claimant's legal pneumoconiosis was a substantially contributing cause of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c); Decision and Order on Remand at 49. We therefore affirm the ALJ's finding Claimant established a change in condition, 20 C.F.R. §725.310(c); Decision and Order on Remand at 6-7, and the award of benefits.

Accordingly, the ALJ's Decision and Order Granting Request for Modification is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge